

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-528-C - ORDER NO. 92-264
APRIL 6, 1992

IN RE: Application of WATS/800, Inc. for)
a Certificate of Public Convenience) ORDER
and Necessity to Operate as a Reseller) GRANTING
of Telecommunications Services within) CERTIFICATE
the State of South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of WATS/800, Inc. (WATS/800 or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. WATS/800's Application was filed pursuant to S.C. Code Ann. §58-9-280 (1976) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed the Company to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of the Company's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by Southern Bell Telephone & Telegraph Company

(Southern Bell).

A hearing was commenced on March 10, 1992, at 11:00 a.m. in the Commission's Hearing Room. The Honorable Marjorie Amos-Frazier, Chairman, presided. Frank R. Ellerbe, III, Esquire, represented WATS/800. Caroline N. Watson, Esquire, represented Southern Bell; and Marsha A. Ward, General Counsel, represented the Commission Staff.

FINDINGS OF FACT

1. WATS/800 is a privately-held corporation incorporated in the State of Indiana. WATS/800 is a switchless reseller which provides interstate, interexchange long distance telephone service. It offers intrastate interexchange telecommunications services on a resold basis by obtaining volume discounted services from facility-based carriers. WATS/800 seeks a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange services on an interLATA basis within the State of South Carolina. Application.

2. WATS/800 presented the testimony of Patrick Freeman, Manager of Rates and Tariffs for the Company. Mr. Freeman testified that WATS/800's underlying carrier is AT&T and that the Company planned to resell AT&T's Software Defined Network (SDN) and Distributed Network Services (DNS). Mr. Freeman explained the Company did not intend to carry intraLATA traffic. He testified WATS/800 will provide 1+ services to its end-users. The Company markets its services to small and medium sized businesses.

3. Mr. Freeman testified that WATS/800 does not intend to offer operator services.

4. Mr. Freeman testified that the Company operates on an interstate basis in 47 states and has intrastate authority in 32 states.

5. Mr. Freeman testified that WATS/800 would provide South Carolina consumers with a competitive long distance price and that by lowering the costs of telecommunications, smaller businesses would be able to maintain their communications costs at levels that are equivalent to very large long distance users.

6. According to Mr. Freeman, WATS/800 has net worth of approximately \$79,547 for the first nine months of 1991. WATS/800 agreed to abide by all Commission regulations and orders regarding its rates and service.

7. Southern Bell presented the testimony of C.L. Addis, Staff Manager - Regulatory Matters. Mr. Addis testified that Southern Bell did not oppose the resale of SDN on an interLATA basis but that it was concerned about the completion of intraLATA calls over SDN. WATS/800 objected to various portions of Mr. Addis' testimony on the grounds of irrelevance.

8. At the conclusion of the hearing counsel for Southern Bell objected to several matters and moved for the Company's application to be dismissed for the following: (1) lack of information on whether the applicant is providing unauthorized intraLATA access through the use of 1-700 dialing; (2) failure of the Company to comply with S.C. Code Ann. §§58-9-350, 520 and 570

(Cum. Supp. 1991); and (3) the Company is seeking authority to resale its services to resellers.

CONCLUSIONS OF LAW

1. The Commission finds that WATS/800's Application fully complies with all relevant statutory provisions. Contrary to Southern Bell's argument, §58-9-520 (Supp. 1991) only requires a telephone utility to provide the Commission with thirty days advance notice of its intention to file a new rate or tariff which will affect its general body of subscribers. Here, WATS/800 seeks a certificate of public convenience and necessity under §58-9-280 to operate as a telephone utility in South Carolina. WATS/800 is seeking initial authority to operate as a utility and approval of its initial rates and charges; it is not seeking authority to establish new rates for its customers. Accordingly, the Commission concludes that §58-9-520 is inapplicable and, consequently, denies this portion of the motion to dismiss.

2. Likewise, the Commission concludes that §58-9-350 (1976) is inapplicable. Section 58-9-350 provides telephone utilities with the right to charge depreciation as an annual operating expense. Alternatively, the Commission may require a telephone utility to charge depreciation as an operating expense. This Commission has not required WATS/800 to submit depreciation as an operating expense. Moreover, WATS/800 has not elected to charge depreciation as an operating expense. WATS/800 Application has not violated §58-9-350 by the Company's decision not to submit depreciation as an expense or by the Commission not requiring the

Company to submit depreciation as an expense.

3. The Commission concludes that §58-9-570 (1976) is inapplicable to WATS/800's Application for a Certificate of Public Convenience and Necessity and for the establishment of initial rates and charges. Section 58-9-570 appears under Article V, Chapter 9 of Title 58 of the South Carolina Code of Laws. Article V is entitled "Telephone Companies - Changes in Rates." Since WATS/800 is seeking authority to operate as a telephone utility in South Carolina and authority to charge its initial rates, the Commission concludes §58-9-570 is inapplicable.

4. Likewise, as to Southern Bell's motion to dismiss due to WATS/800 potentially reselling its services to other resellers, the Commission has never prohibited that practice as long as the reseller is properly certified by this Commission.

5. Southern Bell's objection to the potential for WATS/800 to provide unauthorized intraLATA toll access through the use of a subscriber dialing "1-700" should be addressed. While the Commission finds it is not necessary to dismiss the Company's application, the Commission herein instructs the Company that it is not authorized to resale intraLATA services except through those carriers with intraLATA authority and which offer WATS, MTS, FX, Private Line or other services authorized for resale. The Company is not authorized to use "1-700" to complete intraLATA calls and should so instruct and educate its subscribers. The Commission will monitor the Company's intraLATA calls, if any, and will take action it deems appropriate if the Company violates its authority.

6. The Commission concludes that WATS/800 has the experience, capability, and financial resources to provide the service described in its Application and by Mr. Freeman's testimony.

7. The Commission concludes that South Carolina telephone users and the State itself will benefit by the services intended to be provided by WATS/800. Accordingly, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to WATS/800 to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs approved by the Commission.

8. Should WATS/800 complete any unauthorized intrastate intraLATA calls, the Company will be required to compensate the local exchange companies for the unauthorized calls it carries pursuant to Commission Order No. 86-793 in Docket No. 86-187-C.

9. The Commission adopts a rate design for WATS/800 for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). The Commission adopts WATS/800's proposed maximum rate tariffs.

10. WATS/800 shall not adjust its rates below the approved

maximum level without notice to the Commission and to the public. WATS/800 shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of WATS/800's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1991).

11. WATS/800 shall file its tariff and an accompanying price list in a loose leaf binder to reflect the Commission's findings within thirty (30) days of the date of this Order. WATS/800's provisions regarding advance payments and deposits shall comply with 26 S.C. Regs. 103-621 (Supp. 1991).

12. WATS/800 is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

13. With regard to WATS/800 resale of services, an end user should be able to access another interexchange carrier or operator service provider if they so desire.

14. WATS/800 shall resell the services of only those interexchange carriers or LEC's authorized to do business in South Carolina by this Commission. If WATS/800 changes underlying carriers, it shall notify the Commission in writing.

15. WATS/800 shall file surveillance reports on a calendar or

fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

16. The Commission must rule on WATS/800 objections to Mr. Addis' testimony. In as much as this is a proceeding for a certificate to operate as a reseller in South Carolina and there has been no showing by Southern Bell that WATS/800 has provided any service, Mr. Addis' testimony relating to other carriers violating the Commission's Orders is not relevant. Therefore, the following portions of Mr. Addis' testimony is stricken from the record: p. 3, line 14 through p. 4, line 24; p. 5, line 20 through p. 6, line 13; p. 7, line 2 through p. 8, line 9.

17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)